

APPLICANTS:
James & Sandra Jenkins

REQUEST: A variance to permit a sun porch within the required 35 foot rear yard setback in the R3 District

HEARING DATE: June 27, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5601

ZONING HEARING EXAMINER'S DECISION

APPLICANT: James Jenkins

CO-APPLICANT: Sandra Jenkins

LOCATION: 411 Blueberry Court – Otter Creek Landing, Edgewood
Tax Map: 66 / Grid: 2D / Parcel: 307 / Lot: 124
First (1st) Election District

ZONING: R3 / Urban Residential

REQUEST: A variance pursuant to Section 267-36(B) Table VI, of the Harford County Code to permit a sun porch within the required 35 foot rear yard setback (20 foot setback proposed), in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

James Jenkins, Co-Applicant, described his property as an approximately 7,500 square foot lot, improved by a single family, four bedroom, two-story colonial-type dwelling. The house is improved by a deck and screened-in sunroom to its rear. A detached shed is also located on the property. The Applicants purchased the property in July 2006.

The Co-Applicant explained that he wishes to improve the sunroom by the installation of windows in place of existing screens. To do so, however, a variance is necessary. The Co-Applicant explained that the sunroom was in existence when he and his wife purchased their property. The sole change which will be made is that existing screens will be replaced with new windows, and a certain amount of the existing woodwork will be enclosed with vinyl. The look of the sunroom, explained the Co-Applicant, will not change.

Mr. Jenkins stated that his wife has allergies and asthma, and a grandchild who visits them often has allergies. Enclosing the sunroom will help relieve the allergies and asthma suffered by his wife, and allergies suffered by his grandchild.

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In support of his request, Mr. Jenkins supplied a Doctor's note dated May 15, 2007 which confirmed that Mrs. Jenkins has asthma, and would benefit from "the fresh air and windows in her sunroom." See Applicants' Exhibit No. 2.

Mr. Jenkins explained that his Homeowner's Association has approved his plan. A letter dated May 22, 2007 was accepted as Applicants' Exhibit No. 1 which confirms approval by the Otter Creek Homeowners Association, Inc.

Mr. Jenkins concluded that the improvement to his sunroom will improve the value of his property; will give his family more living space; will help maintain the health of his wife and his grandchild; and is not an extension of the sunroom, but merely a change from screens to windows.

Next testified Sandra Jenkins, Co-Applicant. Mrs. Jenkins testified that she and her husband have two grandchildren who often visit them. One of the grandchildren has allergies and it is a problem for the grandchild to use the sunroom. Windows would help maintain air quality in the room and allow Mrs. Jenkins and her grandchild to be more comfortable in the sunroom. Pollen is a real problem for both her and her grandchild, and the installation of windows would help reduce the affects of pollen.

Next testified David Westerfield of Patio Enclosures, Inc. Mr. Westerfield stated that a variance for the subject property was issued on June 9, 1999 that found the property to be unique.¹

Mr. Westerfield explained that the June 9, 1999 Decision found the property to be unique. The deck will not be extended further into the rear yard than it is at present. The only change will be the installation of windows in place of screens, and the existing wooden beams will be wrapped with vinyl. Mr. Westerfield suggested that the property is also unique due to the existence of a 7-1/2 foot Drainage and Utility Easement along both sides of the lot, and a 15 foot Drainage and Utility Easement along the rear.

Mr. Westerfield also pointed out that the Jenkins' home appears to be located farther to the rear of its lot than other homes in the vicinity of the Jenkins' home. Mr. Westerfield utilized Attachment 10 to the Staff Report to show that the Jenkins' home is somewhat closer to the rear yard property line than its adjoining neighbors which would, of course, reduce the available rear yard within which to build the improvement requested by the Applicants without a variance.

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune, in addressing Mr. Westerfield's observation that the Jenkins' home is set farther back on its lot than its adjoining neighbors, pointed out that the homes in the neighborhood have staggered front yard setbacks. The setbacks in the area are not uniform, but vary. Accordingly, the Applicants' property is not unique.

¹ Case No. 4926, to which Westerfield referred, granted approval to construct the present deck and screened porch within the required 35' rear yard setback in a R3 District.

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Mr. McClune also observed that a condition of the 1999 zoning approval was that the use not be expanded. Mr. McClune also stated that the earlier variance was for 4 feet, which was a minor area variance which requested significantly lesser relief than does the present case. Mr. McClune and the Department see no adverse impact, but they cannot find that the property is unique sufficient to justify the variance.

There was no other testimony or evidence given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is a 7,500 square foot lot located within the Otter Creek Landing subdivision off Willoughby Beach Road in the Edgewood area. The lot is improved by an attractive, two-story, four bedroom Colonial with an attractive deck and sunroom addition to its rear.

In 1999, a variance (Board of Appeals Case No. 4926) was requested to construct the existing deck and screened porch within the required 35 foot rear yard setback. That request was for a 4 foot variance.

The reasons given for the variance in Case No. 4926 were that a sediment pond and Natural Resources District were located to the rear of the parcel, and the property is encumbered by a 7-1/2 foot Drainage and Utility Easement along both sides of the lot, and a 15 foot Drainage and Utility Easement along the rear.

Without any real discussion, the Hearing Examiner found that the property was unique, and granted the variance. As the required rear yard setback was 35 feet, and an open deck could encroach within the rear yard setback up to 25% without the variance, the Hearing Examiner granted the relief allowing an additional encroachment of 4 feet. Accordingly, the deck and screened-in sunroom could be located 22 feet from the rear yard lot line. The variance request in Case No. 4926 was classified by Mr. McClune of the Harford County Department of Planning and Zoning as minor in scope.

The Applicants justify the present request for a variance by stating that the total impact of the variance would be to allow them to replace existing screens in their sunroom with windows. The Applicants suggest there will be no adverse impact, and the Department does not disagree. The Applicants further justify their request as one having health implications, as both the grandchild and the Co-Applicant suffer from breathing disorders. Enclosing the existing sunroom will give them a space which is, hopefully, reduced in pollen and other breathing irritants.

In truth, the Applicants request a variance which would allow them a relatively innocuous use, one which for the most part has already been substantiated by an earlier Decision, and a use which would have no adverse impact on the neighbors. Indeed, the only impact one can envision would be a positive one in improving the usability of the Applicants' property with no visible or negative impact on the neighbors or the community. The Applicants' Homeowners Association confirms such a finding by stating that the Homeowners Association has no objection to the relief requested.

The Department of Planning and Zoning states, no doubt concerned about the precedent setting effect such an approval would have, that there is nothing unique about the property so as to allow the granting of the variance. While perhaps not the most compelling case brought before the Board, certainly sufficient evidence exists to find that the property does contain unique features which directly impact upon the Applicants request for this variance.

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A review of Attachment 10 to the Staff Report, referred to by Mr. Westerfield, clearly shows that the Jenkins' home is somewhat farther back on its lot, and farther removed from the front yard lot line, than are its neighbors. The site plan presented by the Applicants also shows that the house is setback relatively far off the 25 foot minimum building front setback line. The additional distance appears to be approximately a minimum of 15 feet. In other words, if the home were located upon its front yard setback line, the Applicants would not need the variance requested.

This unusual feature of the Applicants' property is sufficient so as to cause them practical difficulty. That difficulty is their inability to enclose a deck and sunroom, a common improvement to homes throughout Harford County.

CONCLUSION:

Accordingly, it is recommended that the requested variance to allow the existing screened-in porch to be enclosed with glass be approved, subject to the following conditions:

1. The Applicants must obtain all necessary permits and inspections.
2. The shed located in the rear right corner of the property be moved and relocated in accordance with its approved permit and site plan.

Date: August 1, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on AUGUST 29, 2007.